HUD-NAIHC Summit: Navigating Compliance in Tribal Housing Procurement

September 3, 2026

This training is offered by the U.S. Department of Housing and Urban Development (HUD) and the Office of Native American Programs, under a cooperative agreement with National American Indian Housing Council

Panelists

HUD ONAP

Greg Stuckey, Moderator

Hobbs, Straus, Dean, & Walker, LLP

Ed Clay Goodman, Partner

Cari L. Baermann, Partner

Agenda

- Welcome and Introductions
- Updated OMB Guidance
- Overview of Procurement Requirements
- Additional Procurement Suggestions

Welcome and Introductions

Updated OMB Guidance

OMB Guidance for Federal Financial Assistance (April 22, 2024)

- Background: Tribal grant programs (IHBG, Tribal HUD-VASH, ICDBG, and NHHBG) are subject to:
  - 2 CFR Part 200: government-wide procurement requirements
  - NAHASDA procurement requirements
- OMB Guidance for Federal Financial Assistance (April 22, 2024):
  - Revised 2 CFR 200.317 to authorize Tribes to adopt their own procurement policies and procedures in lieu of using certain requirements under 2 CFR Part 200.
  - Must be the same policies and procedures you use for procurements with non-federal funds.
  - Gives Tribes the same authority as states have long had.
  - For Tribes that adopt their own procurement policies, certain sections of 2 CFR Part 200 would no longer apply.

OMB Guidance for Federal Financial Assistance (April 22, 2024) (continued)

- Specifically, the following sections of 2 CFR Part 200 would no longer be applicable:
  - 200.318 – General Procurement Standards
  - 200.319 – Competition
  - 200.320 – Procurement Methods
  - 200.324 – Cost and price
  - 200.325 – Federal agency review
  - 200.326 – Bonding

OMB Guidance for Federal Financial Assistance (April 22, 2024) (continued)

- However, the following sections of 2 CFR Part 200 would still be applicable:
  - 200.321 – Small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms
  - 200.322 – Domestic Preferences
  - 200.323 – Procurement of Recovered Materials
  - 200.327 – Required Contract provisions

If a Tribe/TDHE does not have its own Procurement Policies and Procedures

- If a Tribe/TDHES does not have its own procurement policies and procedures that apply to its procurement with non-federal dollars, it must follow the rules in 2 CFR §§ 200.318-200.327.
- The next sections of the presentation will focus on the federal regulation requirements.

OMB Guidance for Federal Financial Assistance (April 22, 2024) (continued)

Streamlined Procurement Requirements

- OMB's revised 2024 regulations streamlined the procurement standards applicable to Tribes to allow more flexibilities and remove burdens:
  - Authorizes tribes to adopt their own procurement standards, similar to states.
  - Removes requirement that tribes open bids in public.
  - Removes prohibition on using geographic preference requirements when conducting procurements. 2 CFR Section 200.319.
  - Reduces performance reporting requirements to "no more frequently than quarterly unless a specific condition has been implemented". 2 CFR Section 200.329(b).

Overview of Procurement Requirements

Notice PIH 2026-08

Changes to Procurement Requirements

- March 27, 2026 Notice PIH 2026-08:
  - Explains recent changes to the federal micro-purchase, simplified acquisition, and single audit act thresholds and new streamlined procurement requirements
  - The Single Audit Act threshold was raised from $750,000 to $1,000,000.
  - The procurement standards applicable to Tribes were streamlined to allow more flexibilities, including the authority to adopt their own procurement standards, similar to States. (Discussed later)
- Tribal programs should revise their procurement policies and ensure staff are trained on the new limits to maintain compliance and to take advantage of these new flexibilities

Notice PIH 2026-08

Changes to Procurement Thresholds

- March 27, 2026 Notice PIH 2026-08 explains that on August 27, 2025, procurement thresholds increased:
  - Micro-purchase threshold increased from $10,000 to $15,000.
- The Micro-purchase threshold is a dollar limits that determines which purchasing requirements a Tribe or TDHE must follow.
  - Micro-purchases: informal methods

Notice PIH 2026-08

Micro-Purchase Threshold: Self-Certification

- A Tribe/TDHE may self-certify a higher micro-purchase threshold up to **$50,000** each year (2 CFR 200.320(a)(1)(iv)). The self-certification must include justification, clear identification of the threshold, and supporting documentation of any of the following:
    - A qualification as a **low-risk auditee**, in accordance with the criteria in 2 CFR § 200.520 for the most recent audit; or
    - An annual internal **institutional risk assessment** to identify, mitigate, and manage financial risks.
- To conduct an **internal institutional risk assessment**, Tribes and TDHEs must use and maintain the following recipient versions of the Office of Native American Program's (ONAP's) Monitoring Plans:
    - Financial and Fiscal Management Monitoring Plan
    - Internal Controls Monitoring Plan
    - Cash Management Monitoring Plan

Notice PIH 2026-08
Micro-Purchase Threshold: Self-Certification

- The Tribe or TDHE must keep records of its annual self-certification and make them available to ONAP or auditors if requested, in accordance with 2 CFR § 200.334 and 24 CFR § 1000.552.
- Micro-purchase thresholds above **$50,000** must be requested in a letter from the Authorized Tribal Official (including a resolution) and approved in writing by ONAP.
    - Tribes and TDHEs must send their Area ONAP a request that includes the required Self Certification Elements.
    - The higher threshold stays in place unless something changes that affects the original justification (for example, if a later audit shows the Tribe or TDHE is no longer low risk).

NAHASDA de Minimis Exemption

- NAHASDA de Minimis Exemption: a separate option from a micro-purchase
  - Provides exemption for competitive procurement rules for goods and services valued at <u>less than $5,000</u>, specifically for activities funded by the IHBG program under NAHASDA.
  - A tribe cannot apply the provisions of 25 U.S.C. § 4133(g) to the ICDBG program.
  - Tribal preference rules apply to all micro-purchases but do not apply to de minimis procurements.
  - IHBG recipients may continue to use the de minimis procurement exemption, which allows them to purchase goods or services under $5,000 with grant funds without following competitive procurement rules.

Notice PIH 2026-08

Changes to Procurement Thresholds (continued)

- March 27, 2026 Notice PIH 2026-08 explains that on August 27, 2025, the simplified acquisition threshold was increased:
    - Simplified acquisition threshold increased from <u>$250,000 to $350,000</u>.

- The simplified acquisition threshold is a dollar limit that determines which purchasing requirements a Tribe or TDHE must follow.
    - Below simplified acquisition threshold: Informal methods
    - Above the simplified acquisition threshold: Formal methods or Noncompetitive methods (2 CFR 200.320)

Tribal/Indian Preference Requirements: IHBG procurement

- 24 CFR 1000.52: Tribes/TDHEs must apply the tribal employment and contract preference laws adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA.
- If no tribal employment/contract preferences:
  - Tribes/TDHEs must, to the greatest extent feasible, give preference in the award of contracts for NAHASDA-funded projects funded to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)).

2 CFR § 200.319 – Requires Competitive Procurement

- All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with this section and § 200.320.
- Noncompetitive procurements can only be awarded in accordance with § 200.320(c).
- Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

2 CFR § 200.319 – No unfair competitive advantage.

- Examples:
    1) Placing unreasonable requirements on firms for them to qualify to do business;
    2) Requiring unnecessary experience and excessive bonding;
    3) Noncompetitive pricing practices between firms or between affiliated companies;
    4) Noncompetitive contracts to consultants that are on retainer contracts;
    5) Organizational conflicts of interest;
    6) Specifying only a "brand name" product instead of allowing "an equal" product; and
    7) Any arbitrary action in the procurement process.

Procurement Using Strategic Sourcing

- When appropriate for the procurement or use of common or shared goods and services, tribes and TDHEs may enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. 2 CFR § 200.318(e)
- Documented procurement actions of this type (strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of 2 CFR Part 200.

2 CFR § 200.319 – Written Procurement Policies or Procedures are Required

- Must Require that Procurements:
  - Incorporate a clear and accurate description of the technical requirements.
  - Provide minimum essential characteristics and standards to which the property, equipment, or service must conform.
  - Avoid detailed product specifications if at all possible.

2 CFR § 200.319 – Written Procurement Policies or Procedures are Required (continued)

- Must Also Require that Procurements:
  - When it is impractical or uneconomical to describe the technical requirements
    - a “brand name or equivalent” description of features may be used to provide procurement requirements, but the specific features of the named brand must be clearly stated.
  - Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.
  - Must be consistent with 2 CFR §§ 200.317, 200.318, 200.319, and 200.320.

2 CFR § 200.320 Procurement methods.

- There are four types of procurement methods described in this section:
  - Informal procurement methods (for micro-purchases and simplified acquisitions)
  - Sealed bids
  - Requests for proposals/qualifications
  - Non-competitive procurement
- August 27, 2025: procurement thresholds increased
  - Micro-purchase threshold increased from $10,000 to $15,000.
  - Simplified acquisition threshold increased from $250,000 to $350,000.
- Tribal programs should revise their procurement policies and ensure staff are trained on the new limits to maintain compliance and to take advantage of these new flexibilities

Informal procurement methods (for micro-purchases)

Micro-purchases

- You do not need to solicit competitive price or rate quotations if you determine the price reasonable based on research, experience, purchase history, or other information
- You must maintain the documentation to support your conclusion
- Some examples
  - Information from prior procurements
  - Informal phone calls for information
  - Going to the store or vendor websites and checking prices

Informal procurement methods (for simplified acquisitions)

- <u>Simplified Acquisitions (small purchase): that do not exceed $350,000</u>
    - You must obtain price or rate quotations from an “adequate number” of “qualified” sources – in writing.
    - You do not need to send out an RFP, but just ask (over the phone, by email, etc.) for the vendor/contractor to send over written price or rate quotations.
    - Unless specified by the Federal agency, you may exercise judgment in determining what number is <u>adequate</u> (at least two) and who are <u>qualified</u> sources.
    - You must maintain the documentation to support your conclusion
- Each Tribe or TDHE may set its own lower simplified acquisition threshold based on internal controls, risk assessment, and written procurement procedures, but it cannot exceed the $350,000 limit.

Sealed bids

- Bids are publicly solicited through an invitation to bid, using a firm fixed-price contract (lump sum or unit price).
- Award is to the responsive and responsible bidder <u>who is the lowest in price</u>.
- The sealed bids procurement method is preferred for procuring construction services.

Sealed bids (continued)

- All of the following conditions should be present:
  - A complete, adequate, and realistic specification or purchase description is available.
  - Two or more responsible bidders have been identified as willing and able to compete effectively for the business.
  - The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.

Sealed bids (requirements)

- The following requirements apply:
  - Bids must be solicited from an adequate number of qualified sources, providing them with "sufficient" time to respond prior to the date set for opening the bids.
  - Invitation for bids need **<u>not</u>** be publicly advertised (unless you are a "local government").
  - The invitation for bids must specifically define the items or services to enable bidders to properly respond.
  - All bids will be opened at the time and place prescribed in the invitation for bids.
  - Invitation for bids need **<u>not</u>** be publicly opened (unless you are a "local government").

Sealed bids (requirements – continued)

- A firm-fixed-price contract is to be awarded in writing to the lowest responsive bid and responsible bidder.
- When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest.
- Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.
- You must document and provide a justification for all bids you reject.

Sealed bids (when can you negotiate with the successful bidder on price?)

- Generally negotiations in the sealed bidding process is not allowed with sealed bidding – would defeat the purpose of sealed bids and picking the lowest bidder based on price.
  - Could allow for unfair advantage once bidders know the other's prices.
  - Could allow for collusion.
  - 2 CFR part 200 and the Federal Acquisition Regulations (FAR) state no negotiating after sealed bids.
- However, there are some avenues available for post-bid negotiations
  - Use RFP/RFQ (sealed bids are "preferred" method for construction contracts but not required)
  - Value engineering clauses
  - FAR Subpart 14.404-1
  - FAR Subpart 14.5

Sealed bids (when can you negotiate with the successful bidder on price?)

- FAR Subpart 14.404-1 allows for a process of cancelling the sealed bid process after the bids are received and opened and authorizing negotiations under specific circumstances.

- (a)
  - (1) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

But:

Sealed bids (when can you negotiate with the successful bidder on price?)

- FAR Subpart 14.404-1(c)

(c) Invitations may be cancelled and all bids rejected before award but after opening when, consistent with paragraph (a)(1) above, the agency head determines in writing that—

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies or services being contracted for are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

Sealed bids (when can you negotiate with the successful bidder on price?)

- FAR Subpart 14.404-1(c)(continued)

- (6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;
- (7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see subpart 3.3 for reports to be made to the Department of Justice);
- (8) No responsive bid has been received from a responsible bidder.
- (9) A cost comparison as prescribed in OMB Circular A-76 and subpart 7.3 shows that performance by the Government is more economical; or
- (10) For other reasons, cancellation is clearly in the public's interest.

Sealed bids (when can you negotiate with the successful bidder on price?)

- FAR Subpart 14.404-1(e)
  - (1) If the invitation for bids has been cancelled for the reasons specified in subparagraphs (c) (6), (7), or (8) of this subsection, and the agency head has authorized, in the determination in paragraph (c) of this subsection, the completion of the acquisition through negotiation, the contracting officer shall proceed in accordance with paragraph (f) of this subsection.

Sealed bids (when can you negotiate with the successful bidder on price?)

- FAR Subpart 14.404-1(f)
- (f) When the agency head has determined, in accordance with paragraph (e)(1) of this subsection, that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate (in accordance with part 15, as appropriate) and make award without issuing a new solicitation provided—
  - (1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and
  - (2) The award is made to the responsible bidder offering the lowest negotiated price.

Sealed bids (when can you negotiate with the successful bidder on price?)

- FAR Subpart 14.404-1(c)(continued)

- (6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;
- (7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see subpart 3.3 for reports to be made to the Department of Justice);
- (8) No responsive bid has been received from a responsible bidder.
- (9) A cost comparison as prescribed in OMB Circular A-76 and subpart 7.3 shows that performance by the Government is more economical; or
- (10) For other reasons, cancellation is clearly in the public's interest.

Sealed bids (when can you negotiate with the successful bidder on price?)

- FAR Subpart 14.5 sets out a detailed two-step process for negotiating contracts via sealed bidding.
  - Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered.
  - Second step is sealed bidding based on information received in the first step.

Requests for proposals/qualifications

- RFP/RFQ method is to be used when
  - You are above the simplified acquisition threshold, and
  - Conditions are not appropriate for using sealed bids.

- Can result in a fixed-price or cost-reimbursement contract.

- Can negotiate the price after the offers come in.

Requests for proposals/qualifications (requirements)

- RFP/RFQ must be published publicly.
- All evaluation factors and their relative importance must be identified.
- Proposals must be solicited from multiple qualified entities.

Requests for proposals/qualifications (requirements - continued)

- To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.
- You must have written procedures for conducting technical evaluations and making selections.
- Contracts must be awarded to the responsible offeror whose proposal is most advantageous to you considering price and other factors.

Requests for proposals/qualifications (Architect/Engineer specific requirements)

- You may use RFP/RFQ for qualifications-based procurement of architectural/engineering (A/E) professional services.
- Offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation.
- Where price is not used as a selection factor, it can only be used to procure A/E services
- RFP/RFQ cannot be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

Noncompetitive procurement

- Must document that any **<u>one</u>** of the following applies:
  - Procurement is below the micro purchase threshold
  - The procurement transaction can only be fulfilled by a single source;
  - There is a public exigency or emergency that will not permit a delay resulting from providing public notice of a competitive solicitation;
  - Request HUD (in writing) to use a noncompetitive procurement method, and HUD provides approval (in writing)
  - After soliciting several sources, you determine that competition is inadequate.

Procurement Procedures (Summary)

- Steps for every procurement:
  - Determine procurement threshold amounts
  - Review 2 CFR Part 200 requirements
  - Review NAHASDA requirements
  - Review Tribal Procurement policies and procedures
  - Determine whether the procurement is subject to the Build America Buy America Act (BABA)
    - Applies to infrastructure projects: exemptions for single family housing
    - Check for HUD waivers: Muti-Agency Tribal Waiver exempts awards to Tribal Recipients of $2.5 million or less, until January 9, 2030
    - Other Waivers: Small Grants, exigent circumstances, De minimis

Additional Procurement Suggestions

Contracts

- Can a tribe/TDHE just use the contract that the vendor/contractor drafted?
  - Generally, no.
- For any federally funded project, the contract must contain specific terms listed in 2 CFR Part 200 Appendix II, and NAHASDA-required terms. E.g.:
  - Davis-Bacon Act requirements (or tribally determined prevailing wages)
  - Contract Work Hours and Safety Standards Act
  - Rights to Inventions Made Under a Contract or Agreement.
  - Clean Air Act and Federal Water Pollution Control Act
  - Debarment and Suspension
  - Byrd Anti–Lobbying Amendment
  - Drug-Free Workplace

Additional Suggestions

- Always include language in IFBs or RFPs/RFQs that reserves the right to cancel at any time for any reason determined in the best interest of Tribe/TDHE, at your sole discretion
- Include <u>your version</u> of the proposed contract to be used, which should include the federal requirements
- Tie your small purchase procedures to whatever is the current federal simplified acquisition threshold at the time of procurement, so that you do not need to amend your policy when the U.S. raises the amount

Closing